IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

Writ Appeal No.1989 of 2004 & WP No. 21715 of 2004

WRIT APPEAL NO : 1989 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 30/11/2004 in WP NO : 21715 OF 2004 on the file of the High Court.)

Between:

Pitla Ushanna, S/o. Ramulu,
and In-charge Sarpanch of Battisavargoan Gram Panchayat, Adilabad Mandal and

District.

..... APPELLANT

AND

1 A. Narasa Reddy, S/o. Ram Reddy,
Battisavargaon Gram Panchayat, Adilabad Mandal and District.
2 The Collector (Panchayat Wing), Adilabad, Adilabad District.
3 The Divisional Panchayat Officer, Adilabad, Adilabad District.

.....RESPONDENT(S)

Counsel for the Appellant:MR.C.V.MOHAN REDDY

Counsel for the Respondent No.1: Mr. Vinod Kumar Deshpande

Counsel for the Respondent Nos. 2 & 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

And

WRIT PETITION NO : 21715 of 2004

Between:

A.Narasa Reddy S/o.Ram Reddy
Gram Panchayat, Battisavargaon,
Mandal&Dist Adilabad.

..... PETITIONER

AND

1 The Collector (Panchayat Wing)
Adilabad.
2 The Divisional Panchayath Officer,
Adilabad Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction, more particularly one in the nature of writ of certiorari to call for the records in proceedings No.935/K4.Pts/2003 dt 18-11-2004 on the file collector (Panchyat Wing), Adilabad Dist and declare the action of the Respondent No.1 in suspending the petitioner herein from the post of Sarpanch, Gram Panchayath, Battisavargaon village, by exercising powers under Sec.249(6) of A.P.Panchayat Raj Act, 1994 as arbitrary, illegal without jurisdiction and violative of principles of natural justice and contrary to the procedure under the provision 249 of A.P.Panchayat Raj Act, 1994 and consequently set aside the same and pass.

Counsel for the Petitioner:MR.VINOD KUMAR DESHPANDE

Counsel for the Respondent Nos.1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following Common Judgment: (per Sri Devinder Gupta, CJ)

The order dated 18.11.2004 passed by the Collector, Adilabad placing the writ petitioner-Respondent No.1 under suspension in exercise of powers under Section 249(6) of A.P. Panchayat Raj Act, 1994, (hereinafter referred to as the 'Act') was under challenge in the writ petition. Learned single judge by the order impugned in this appeal has suspended the order of suspension and challenge is now made to the said order by appellant who is not a party to the writ petition, but incidentally, he happens to be the Upa Sarpach who had been asked to look after the work of Sarpanch.

Appellant's grievance in the appeal is that though Caveat was filed, name of the counsel was not shown and when the writ petition was taken up counsel for the appellant could not appear and the matter ought to have been adjourned to next date. Without hearing the appellant counsel and without assigning any reasons, interim order of suspension was passed by the learned single judge by the order impugned in this appeal. Learned counsel for the appellant submits that the Collector after issuing show cause notice dated 13.10.2004 to the respondent No.1 and after considering the explanation dated 20.10.2004 filed by the 1st respondent, has proceeded to pass the order suspending the writ petitioner. The entire proceedings were initiated on the basis of a complaint lodge by the appellant, incidentally who happens to be the Upa Sarpanch of the said Gram Panchayat. There is alternate remedy available to the 1st respondent to challenge the order of suspension passed by the Collector by preferring revision before the Government under Section 264 of the Act and instead of availing of that remedy, the 1st respondent has filed the writ petition, which is not maintainable. Therefore, there is no lawful justification on the part of the learned single judge in passing the impugned order of suspension.

Learned counsel for the 1st respondent questioned the locus standi of the appellant and further submits that there is violation of principles of natural justice inasmuch as the report of Divisional Panchayat Officer, Adilabad dated 21.8.2004 of which reference was made in the show cause notice was not supplied to the 1st respondent-writ petitioner. In the absence of which, it cannot be said that any

opportunity was afforded to him before passing the order of suspension. He further submits that earlier, on the same charges, a report was submitted by the Divisional Panchayat Officer, Adilabad on 23.12.2003 stating that the allegations levelled against the 1st respondent were found to be false and incorrect, later on by the change of Government, fresh report was sent on 21.8.2004 and thus it is mala fide. However, with regard to locus standi, reliance has been placed by the learned counsel for the 1st respondent on the decision of a learned single judge of this Court in TIPPINENI RAMESH vs. GOVERNMENT OF ANDHRA PRADESH & OTHERS ().

We have duly considered the submissions made at the Bar.

In Tippineni Ramesh's case cited supra, the Upa Sarpanch who was put in charge had in fact preferred revision petition questioning the order passed by the Joint Collector ordering reinstatement of the Sarpanch and it was held that Upa Sarpanch had no locus standi to challenge the said order. The ratio of this decision will not be applicable to the facts of the instant case, in-as-much-as, the appellant has not challenged the order in the capacity of Upa Sarpanch that any of his rights as Upa Sarpanch have been violated. Appellant is a complainant on whose complaint, Divisional Panchayat Officer, Adilabad has submitted report and after show cause notice was issued, the 1st respondent was put under suspension. Therefore, locus-standi of the appellant cannot be challenged.

As regards violation of principles of natural justice, we have gone through the reply submitted by the 1st respondent-writ petitioner to the show cause notice dated 13.10.2004. Nowhere in the reply, any grievance is made by the writ petitioner that he is handicapped of submitting reply to the show cause notice because of non-supply of the report of the Divisional Panchayat Officer, Adilabad dated 21.8.2004. Therefore, there is no force in the submission that the order of suspension is in violation of principles of natural justice. Therefore, the order of suspension passed under Sub-Section (6) of Section 249 of the Act is only pending further enquiry into the matter and normally we do not interfere with such orders by exercising Writ Jurisdiction, more particularly when there is alternative remedy available to the aggrieved party of preferring revision before the Government. In the instant case, nowhere in the writ petition, there is a challenge made that the order of suspension is mala fide. Therefore, we are of the view that the learned single judge was not at

all justified in passing a laconic order. Learned single judge has not given cogent and convincing reasons in passing the impugned order of suspension.

The writ appeal is accordingly allowed. The impugned order is set aside. The writ petition is also dismissed.

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DEVINDER GUPTA, CJ

Date: 9th December, 2004

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M. NARAYANA REDDY, J

Pnb

To

1 The Collector (Panchayat Wing), Adilabad, Adilabad District.
2 The Divisional Panchayat Officer, Adilabad, Adilabad District.

3 Two C.Cs. to the Government Pleader for Panchayat Raj, High Court

Buildings, Hyderabad. (OUT)

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